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TAGS: PHUM KJUS PREL EAID CB
SUBJECT: FRIENDS OF THE ECCC OR RGC?

REF: PHNOM PENH 422

Classified By: Pol/Econ Chief Margaret McKean; Reason 1.4 (b) and (d)

¶11. (C) Summary. The main donor coordinating body for Cambodia's Khmer Rouge Tribunal, the Friends of the ECCC, has proven an effective information-sharing group for reviewing ECCC progress and donor activities in support of the Tribunal's work. The ECCC's problems since the November 2006 plenary and issues related to RGC interference, however, have highlighted the inadequacy of the mechanism, as presently organized by the French and Japanese Embassies. Both missions have shown no willingness to discuss contentious issues surrounding court management, the rules debate, funding inadequacies, let alone the allegations of corruption hanging over the court. Engaging Japan and France is the only way to get their attention. Some like-minded diplomatic missions in Cambodia are willing to request their capitals send demarche cables to Tokyo and Paris, and possibly join with the U.S. in expressing concern over the lack of donor coordination on serious issues related to the ECCC. End Summary.

ECCC Coordination and Limitations of the Friends

¶12. (SBU) The Friends of the ECCC group of interested states was proposed by DPM Sok An at the May 10, 2006 briefing to donors as a mechanism for providing advice and support to the ECCC. DPM Sok An also asked that the French and Japanese missions consider playing a coordinating role in enlisting donors to support such a mechanism. At a subsequent planning meeting by donors, the group decided that Embassy representatives at the meetings would be DCMs or officials handling the ECCC portfolio. The notion of Ambassador-level meetings was floated but remained a nebulous concept. The group determined that it should avoid infringing on the independence of the Tribunal and therefore not debate many of the legal issues that would be handled by the court. That was the job of the judges, and the Friends group should focus primarily on the working of the court, the administration and finances, and whether the court is fulfilling its goal of functioning as a model of legal reform for Cambodia. Diplomats welcomed the French and Japanese offers to act as co-coordinators, with meetings to be held every other month and hosted on a rotating basis by the two missions. At every meeting, ECCC staff provide an update of the progress of the court, and donors announce various projects in support of ECCC activities, particularly those organized by NGOs that

fall outside the ECCC's management. As the court began to operate in July 2006 and nothing controversial was going on, the Friends meetings functioned well.

¶13. (SBU) Since the disastrous November 2006 plenary session, however, the Friends meetings have been less useful in determining what has been happening with the ECCC and the role of donors/interested states. The two meetings that have been held since then provided little opportunity for frank discussion as to the differences between the international and Cambodian judges over the draft internal rules. During the week-long November plenary, neither the French nor the Japanese contacted other missions regarding the threat by the international judges to suggest to the UN that support to the ECCC be halted. The Japanese mission, when contacted by us, indicated that their Ambassador would try to schedule a meeting with DPM Sok An, but a meeting reportedly did not take place until the week following the plenary; no formal readout was given to other missions.

¶14. (SBU) During the review committee meeting in January, ECCC senior staff recognized at the outset of the meeting that the process was off to a poor start. Fearful of a repeat of the November plenary, they contacted OSJI and asked if the NGO would fund a trip for former U.S. Ambassador at large for War Crimes, David Scheffer, who had a personal history with DPM Sok An and was considered a valued interlocutor by the RGC and strong proponent of the ECCC. OSJI complied, and Scheffer's negotiation with DPM Sok An on the most contentious points was largely credited for the success that was achieved at that session.

¶15. (C) In the meantime, a number of other issues have plagued the court: poor staff morale as a result of the delays, inadequate finances, complaints about the UN administration of the court, alleged political interference, and, most recently, the flap over OSJI and revelations regarding corruption allegations at the ECCC. None of these issues has been discussed at the Friends meetings, due to presence of ECCC staff throughout the meetings. Trying to engage the Japanese and the French to hold ad hoc meetings outside the normal Friends schedule does not work. OSJI organized a briefing in January for a small group of donors to discuss in more detail the legal issues with the draft rules separating the two sides; we organized a briefing by David Scheffer with the same small group so that he could discuss his meeting with ECCC officials regarding OSJI (reftel). The Canadian Ambassador recently invited us, the UK and German DCMs to a meeting to discuss the limitations of the current Friends mechanism. The Australian Embassy is interested in some changes to the existing format, but also does not support joint diplomatic engagement.

¶16. (SBU) The next Friends meeting will be March 20 following the conclusion of the latest review committee meeting that ends on March 16. We are proposing that the group discuss modifications to the Friends mechanism that will provide opportunities for frank exchanges among donors as well as allow the group to be a more proactive vehicle for addressing issues that could threaten the ECCC's existence (.i.e., possible violation of the 2004 UN/RGC agreement that could lead to withdrawal of UN support under Article 28) or its credibility. ECCC judges and staff have noted that the donors and interested states would be most effective if they could speak with a single voice.

How the French and Japanese View Their Role

¶17. (C) The French and Japanese positions are fairly consistent: the Friends should not play an activist role; individual missions -- if they are so inclined -- can intervene with the ECCC or the government, but the Friends should not act in any collective diplomatic way. We agree that, for the most part, it is up to the UN and Cambodian elements within the ECCC to sort out their internal problems and that donor intervention with the ECCC or the RGC should only be exercised under rare circumstances as noted in para.

¶6. Faced with two situations already where one could reasonably argue Ambassadors should have been called together to at least consider action, the French and Japanese demurred.

¶8. (C) Moreover, we note that in the recent OSJI case, the Japanese Ambassador reportedly gave his blessing to RGC plans to move ahead and evict OSJI from Cambodia. In a conversation with Pol/Econ Chief, the French DCM said that the ECCC did not need NGO observers and if OSJI left the country, it would not make much difference. Given that some ECCC members as well as David Scheffer believe that an RGC decision to close the OSJI office could constitute a violation of the UN/RGC agreement, we are concerned that the two countries are focusing exclusively on the preservation of their bilateral relationship with the RGC in their discussions about the ECCC, and are not taking a more nuanced approach as co-chairs of the Friends.

¶9. (C) The Japanese position is particularly sensitive due to the balancing act the GOJ plays with China in Cambodia. The Chinese, Sean Viisoth believes, are placing pressure on the government with respect to moving forward with the Tribunal. The Japanese want the Tribunal to succeed at virtually any cost, and therefore will be loathe to put any pressure on the government that might make the RGC accord more sympathy to Chinese views. Defending an NGO that publicly has criticized the RGC is anathema to our Japanese colleagues, but they do the RGC no favors by encouraging a position that may bring consequences from UN/New York without at least identifying that possibility to the government. As co-chair of the Friends, we believe Japan and France have some measure of responsibility to engage with the government or the ECCC if exceptional circumstances warrant the waving of a red flag.

Comment

¶10. (C) Absent a push from their respective capitals, the French or Japanese embassies in Phnom Penh will not be receptive to changing their views on the Friends mechanism and their roles as co-chairs. We would welcome Washington views on the possibility of demarching both capitals, and would be willing to send suggested talking points to that end. Both embassies will have a change of Ambassador in the coming weeks (the Japanese Ambassador is leaving in two weeks), so it would be timely to go in before the new Ambassadors arrive at post. Several other missions in Phnom Penh have indicated a willingness to suggest joint demarches to their capitals. End Comment.

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